IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH JAIPUR

J U D G M E N T

Moldin @ Moliya V/S The State of Rajasthan

S.B. Criminal Appeal No.1093/02 against the judgment dated 31.7.2002 passed by Shri Manak Mohta, Sessions Judge, Jaipur City, Jaipur in Sessions case No. 158/97.

Date of Judgment ::: October 10, **2006**

PRESENT

HON'BLE MR. JUSTICE KHEM CHAND SHARMA

Mr. Mahendra Goyal for the appellant
Mr. Jagdish Lamba, Public Prosecutor

BY THE COURT:

This criminal appeal under Section 374 Cr.P.C. arises out of the judgment dated 31.7.2002 passed by the learned Sessions Judge, Jaipur City, Jaipur whereby the learned Sessions Judge Judge has convicted the appellant for offence under Section 3/9 of the Official Secrets Act, 1932 and sentenced him to undergo rigorous imprisonment for five years.

Succinctly stated the facts of the case are that the Station House Officer, Special Police Station, Rajasthan, Jaipur filed a complainant, Ex.P.49 in the

court of Chief Judicial Magistrate, Jaipur City, Jaipur alleging therein that on 7.6.1994, Additional S.P., CID, Border Intelligence (Seema Pragyan), Jaisalmer received a secret information to the effect that one Moldin is involved in espionage (Jasoosi) and sending important information concerning Indian Army, Field Firing Range, Air Force, Canal and Roads etc. to the officials of Pakistan Intelligence. He is present at Thaiyat Fanta and intends to leave for Pakistan. Having received the above information, Additional Superintendent of Police along with his staff reached the pointed place and found present a person of the description as stated by the informant. He was caught with the help of the staff and on being asked, he disclosed his identity as Moldin @ Moliya @ Molla Vbux S/O Kasam by caste Kalar Musalman, resident of Rugeri, Police Station Kotwali, Jaisalmer. Thereupon, he was searched in the presence of two witnesses and in the course of search some documents rolled in `Tehmad' tied on his waist were found. On seeing the papers recovered, it was found that one of the papers was a photo copy of booklet of Army, three hand written ruled sheets which contained secret information about the

Indian Defence Force and important secret informations pertaining to military. The accused was arrested. The Additional S.P. then submitted a written report at Police Station Kotwali, produced the accused and submitted recovered documents. Thereupon, an FIR without number came to be registered for offence under Sections 3 and 3/9 of the Official Secret Act. On the same day, the SHO, Police Station, Kotwali transmitted the above report and the recovered documents along with the accused to Special Police Station, Rajasthan Jaipur. Thereupon a case No. 2/94 for offence under Sections 3, 3/9 of the Official Secret Act and Section 120 B IPC was registered at Special Police Station, Jaipur and investigation commenced. In the course of investigation, the statement of witnesses were recorded and site plan was prepared.

Having completed entire formalities as to the investigation, a criminal complainant for offence under Sections 3, 3/9 of the Official Secret Act came to be filed on 31.5.97 in the court of Chief Judicial Magistrate, Jaipur City, Jaipur. Since the offences were exclusively triable by the court of Sessions, the Chief Judicial Magistrate committed the case to the

court of Sessions.

On the basis of evidence and material and on hearing Public Prosecutor and the counsel for the accused, the learned Sessions Judge framed charges against the accused for offence under Section 3/9 of the Official Secret Act. The accused denied the charge and claimed trial.

The prosecution, in support of its case, examined as many as 12 witnesses and got exhibited 51 documents. After the prosecution evidence was complete, the accused was examined under Section 313 Cr.P.C. In defence, the accused examined DW1 Dinne Khan and DW2 Mithe Khan.

At the conclusion of trial, the learned Sessions Judge found the accused appellant guilty of having committed offence under Section 3/9 of the Official Secret Act and accordingly convicted and sentenced him in the manner stated herein above. Hence this appeal against conviction.

In assailing the conviction, Mr. Goyal, learned counsel for the appellant has strenuously contended that according to the prosecution case the accused was arrested on 7.6.1994 and recovery as alleged by the

prosecution was made from him. In fact, the accused was detained by the police on 4.6.1994 and was kept in police custody. To strengthen the above argument, learned counsel has relied upon the statements of DW1 Diney Khan and DW2 Mithe Khan. DW1 Dinne Khan who happened to be present at the Bus stand on 4.6.94 has categorically stated that accused appellant was arrested by the police on 4.6.94 and he was taken away in a police vehicle. DW2 Dinne Khan was informed of the arrest of the accused on 4.6.94 itself and that it has come in the statement of Dinne Khan that he served food to accused when he was behind the bars at Jaisalmer. He has also relied upon the news paper cutting Ex.D1, which has published the news of arrest of the accused. On these premises, learned counsel argued that the prosecution case, from its very inception is based on baseless allegations and wrong facts. Neither he was arrested on 7.6.94 nor anything was recovered from his possession. In this view of the matter, the learned trial Court has committed serious error in disbelieving the defence evidence, which is wholly reliable and trustworthy.

I have considered the above argument. So far as

news-paper cutting Ex.D.1 is concerned, suffice it to observe that news paper cuttings have no evidentiary value in the eye of law. That apart, the new paper cutting Ex.D1 appears to have been published in the news paper of the edition of 12.6.1994. Having gone through the statements of DW1 Dinne Khan and DW2 Mithe Khan, I am of the firm view that testimony of defence witnesses is highly unreliable and not worthy of credence. DW1 Dinne Khan simply states about the accused being taken away by the police in a vehicle. However, in his cross examination, this defence witness has made it clear that no one was arrested by the police in his presence. Further, the witness has stated that accused had come to `Thaiyad Phanta' in search of his she goat. However, no suggestion to this effect was given from the defence side to any of the witnesses. DW2 Mithe Khan came to know about the arrest of accused only on the basis of information furnished to him by DW1 Dinne Khan. This witness has simply stated that having received information he went to police station to serve food to the accused. He has not stated a single word about the accused having gone to Thaiyat Phanta in search of his she goat. Thus, the defence

evidence, in my considered view, does not discloses that accused was not arrested on 7.6.94 and nothing material was recovered from him. On the contrary, the prosecution by adducing cogent and reliable evidence has been able to establish beyond doubt that accused was arrested on 7.6.94 and documents containing secret informations concerning safety and security of the nation were recovered from him. PW1 Chandan Man Nawal, Addl. S.P. has stated that on 7.6.1994 he had recovered secret documents from the possession of accused Moldin S/O Kasam, resident of Regari. In cross examination, the witness has specifically stated that 'it is wrong to say that he kept accused Moldin and Arab Khan in custody at Police Station, Kotwali from 4.6.94 to 7.6.1994. It is also wrong to say that Moldin was caught while he was waiting for bus at the bus-stand'. He categorically denied the suggestion of having visited the site on 4.6.94 as also the suggestion about two accused having been arrested on that day. PW2 Vishan Singh has also supported the statement of PW1 Chandan Man Naval. PW3 Vidhyadhar, an independent witness has stated that on 7.6.1994 he along with Benidan Advocate had accompanied Chandan Man,

Additional Superintendent of Police, CID, Jaisalmenr to Thaiyat Phanta from Hanuman Chauraha in a police jeep. On seeing the police jeep a person standing at Thaiyat Phanta tried to escape, but the Additional S.P. made him to stop and on inquiry, the person disclosed his name as Moldin. The witness has also certified the recovery of documents from his possession. The additional S.P. had obtained his signatures on the recovered documents. The accused was arrested in his presence vide Ex.P.10. In cross examination, this witness has categorically stated that accused Moldin was arrested on 7.6.1994. It must, therefore, be concluded that accused appellant was arrested on 7.6.1994 and secret documents containing informations about Army, roads, canals etc. Even the accused appellant in his written statement submitted under Sec. 313 Cr.P.C. admitted the presence of Vidhyadhar and Benidan at the time of his arrest.

It was next contended that there are contradictions in the statements of prosecution witnesses on material aspects of the matter. Further the prosecution witnesses have made improvements in their statements which have completely demolished the

prosecution case. To point out contradictions and/ or improvements in respect of information etc., learned counsel has referred to the statements of PW1 Chandan Man Naval, PW2 Vishan Singh and PW3 Vidhyadhar. According to him, the learned trial court has completely ignored the material contradictions, omissions and improvements made in the statements of prosecution witnesses. So far as contradiction as pointed out by Mr. Goyal that PW1 Chandan Man Naval received information on 7.6.1994 at 9.30 AM, but at the same time the witness stated that informant had informed him 15 days prior to the incident is concerned, it may be stated that if the statement of PW1 Chand Man Nawal is read as a whole and not in part, it would make it emphatically clear that informant infomred him 15 days prior to the incident and on 7.6.1994 as well. Therefore, it cannot at all be said that either there was contradiction or the witness made any improvement. Mr. Goyal further stated that PW1 Chand Man Nawal stated that he made aware the Circle Officer of the information of informant prior to their departure and he did not inform others about the said information. He also did not inform the motbirs,

whereas PW2 Vishan Singh and PW3 Vidhyadhar have clearly stated that they were informed by PW1 of the information of informant furnished to him. I have carefully gone through the statements of witnesses. PW2 Vishan Singh in his statement has categorically deposed that when accused was apprehended, PW1 had informed him at the spot that the person apprehended is the same about whom the informant had furnished information to him. Similarly, PW3 Vidhyadhar, an indpendent witness has also stated that he was informed at the crossing itself about the destination and the name of the person to be apprehended. In the light of the above evidence, I do not find any contradictions or improvements in the statements of prosecution witnesses. Contradictions, if any, in the statements of witnesses may be categorized as insignificant as having no adverse effect on the prosecution case.

Mr. Goyal, counsel for the appellant then argued that the documents alleged to be recovered from the possession of the accused appellant did not contain any secret information. Referring the statement of Col. Manmohan Kumar Kapila, learned counsel argued that the witness himself has admitted that Exs. P2 and 3 did not

contain any secret information. On this strength, learned counsel vehemently argued that accused appellant could not have been convicted for offence under Sec. 3 of the Official Secrets Act.

I have considered the above argument. It is evident from the evidence of prosecution witnesses that documents concerning safety and security of the nation were recovered from the conscious possession of accused appellant, which is further fortified by the seizure memo prepared at the spot. In the course of search, the police has recovered from the possession of appellant a Book-let titled as “Administration in peace”, on which the word “Restricted” has been printed. This book-let contains secret informations about the Indian Army. That apart, Exts.P2 and 3 are the task slips and Ex.P4 containing informations about Army have also been recovered from the possession of the accused. PW8 Col. Mohan Kumar Kapila has categorically stated in his examination in chief that Ex.P1 is the “Administration in peace” and the entire information contained therein is in respect of Army. Ex.P1 contains all kind of informations viz., different units of the Army, their working system and their

structure etc. According to this witness, if such informations reach the hands of enemy, it may endanger the safety and security of the nation. In cross examination, the witness stated that Exts. P2 and 3 do not contain secret informations. However, task has been given so as to find out secret informations. The witness further stated that furnishing wrong information to the enemy country may also result in endangering the safety of the nation. Lastly, the witness stated that Ex.P4 contains equal informations about Army and Air Force. PW9 Sarad Kumar Panth, Sr. Scientific Officer, State Forensic Science Laboratory, Jaipur has deposed that Superintendent of Police, CID vide his letter dated 5.7.94 had sent him the documents (Exts. P2,3 and 4) of this case, which he had marked as Q1 to Q3. Specimen documents were also sent which were marked by him as A1 to A28. These documents were sent with a view to find out whether the writer of Q1 to Q3 is the same person who has written A1 to A28. After examination, the witness came to the conclusion that writer of A1 to A28 is the same person who has written the disputed writing Q1. It may be stated that Q1 is the information about the Army and Air Force written by

the accused appellant.

Thus, in the light of the evidence discussed above, it must be held that the prosecution witnesses have proved beyond doubt the recovery of documents containing secret informations concerning safety and security of the nation and that the accused has not been able to offer any explanation, much less reasonable explanation as to why and for what purposes he has kept such documents in his possession.

The provisions of sub Section (2) of Section 3 of the Official Secrets Act, 1923 deals with presumption. In the instant case, the prosecution evidence discloses that accused was in conscious possession of secret informations about military and Indian Army which he intended to pass over to enemy country and since no explanation has been offered by the accused for possession of the documents collected by the appellant and the note written by him, it has to be presumed as required by Section 3(2) of the Act, that the Book-let was obtained or collected and note was written by him for a purpose prejudicial for the safety or interests of the State. I am fortified in my view by a decision of the Apex Court in ***Sama Alana Abdulla*** Vs. ***State of***

Gujrat (AIR 1996 SC 569). In this case the accused was found to be in conscious possession of a map prepared by Border Security Force. The Apex Court considering the question of presumption under Sec. 3(2) of the Act held as under:

> "...The evidence discloses that the house from which the map was found belongs to the appellant. The manner in which it was concealed indicates that the appellant was in conscious possession of the same. As no explanation has been offered by the appellant for possession of the map it has to be presumed, as required by Section 3(2) of the Act, that the map was obtained or collected by the appellant for a purpose prejudicial to the safety or interests of the State".

So far as argument of Mr. Goyal that nothing `secret' was recovered from the possession of the appellant so as to meet the requirments of Section 3(1)(c) of the Act is concerned, suffice it to observe that the qualifying word `secret' in Section 3(1)(c) has been used only with respect to official code or pass word and therefore, other documents or information need not be secret for establishing offence under Sec. 3(1)(c) of the Act. In Sama Alna's case (supra), their Lordships considered the provisions of Section 3(1)(c) of the Act and held as under:

> “...While providing for a presumtion to be raised in prosecution for the offence punishable under that section the phraseology used by the legislature is “if any sketch, plan, model, article, note, document or information relating to or used in any prohibited place, or relating to anything in such a place, or any secret official code or password is made, obtained, collected, recorded, published or communicated.”. From the way the said sub-section is worded, it becomes apparent that the qualifying word `secret' has been used only with respect to or in relation to official code or password and the legislature did not intend that the sketch, plan, model, article, note, document or information should also be secret.”

For the reasons aforesaid, the conviction of accused appellant under the impugned judgment calls for no interference.

So far as argument as to the leniency in the matter of sentence to be extended in favour of appellant is concerned, suffice it to observe that trial court has already extended sufficient leniency while sentencing him to a term of five years only inasmuch as the maximum term of sentence provided under the Act is 14 years.

For the reasons aforesaid, the present appeal being devoid of merit is liable to be dismissed and it

is dismissed accordingly.

(Khem Chand Sharma), J.

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